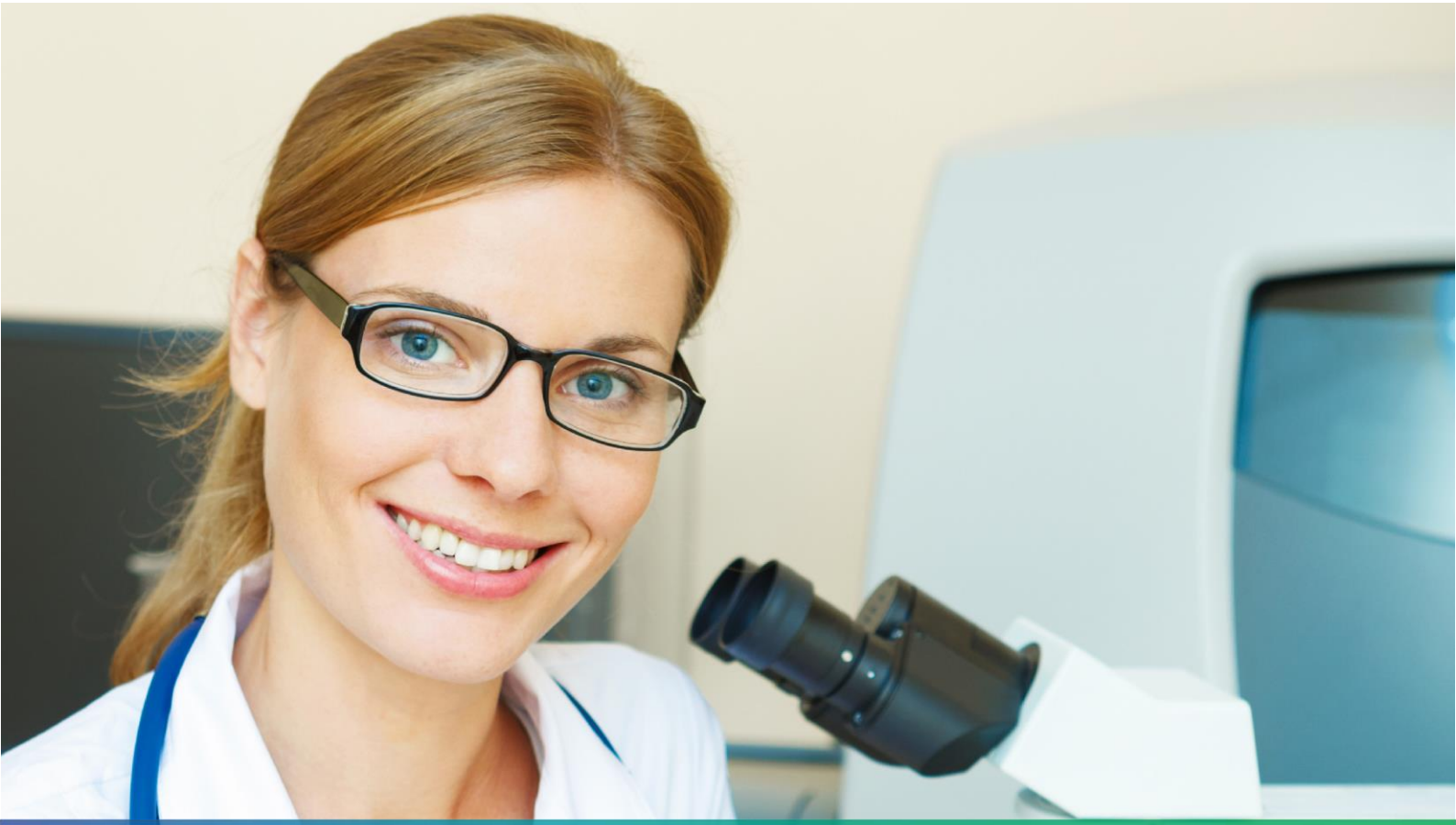
Public Pathology
AUSTRALIA



Competitive Neutrality Policy Review - Submission

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Putting patients first

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Executive Summary

Public Pathology Australia is the national peak body for public (government owned and operated) pathology services across Australia.

This submission addresses the first two questions raised in the Competitive Neutrality (CN) Review Consultation Paper (CN Review) in the context of the Australian pathology market.

1. **Updating the CN policy**: How should the CN policy be updated to reflect commitments made since 1996?

2. **Scope of the CN policy**: What is the appropriate scope of the CN Policy to best fulfil the objective of CN? In particular, should the current test for 'significant business activities' be improved and should the application of CN be subject to a broader public interest test.

Human Services Context
Pathology services play an important role in enabling patients to receive timely diagnoses, have effective monitoring and treatment for disease. Health services such as pathology are human services as classified by the Productivity Commission.

The CN Review stated that it will not be making specific findings in relation to the application of CN to human services since this can be addressed either as part of, or following, a Productivity Commission review.

It was noted that the CN Review may have implications for government involvement in human services.[1] As such, Public Pathology Australia felt it important to make this submission to Treasury and the Productivity Commission. It is hoped that both Treasury and the Productivity Commission will reflect on this submission when considering recommendations on competitive neutrality, and how to introduce greater competition, contestability and user choice to key sectors in human services.

Recommendation
Competitive neutrality policy must be amended to reflect contemporary best practice. When applied to the pathology sector, this means that community service obligations must be clearly exempt, there should be a higher significant business activity threshold and broader public interest exemptions applied.

Competitive neutrality should extend to ensure that all competitors in each market are treated equitably by government. This is not the case in the Medicare Benefit Schedule-funded pathology market and needs to change. Any policy which reinforces the existing oligopoly limits patient choice and access to essential pathology tests. The downstream health, cost and political ramifications of this is not in the best interest of Australia.

Competitive neutrality policy must change to reflect community service obligation exemptions, and a broader public interest test and thresholds.

[1] CN Review, p.5

Background

Public Pathology Australia

Public Pathology Australia is the national peak body for public pathology in Australia.

Pathology is the medical specialty that focuses on determining the cause and nature of disease. By examining and testing body tissues (e.g. biopsies, pap smears) and fluids (e.g. blood, urine) pathology helps doctors diagnose and treat patients correctly. 70 per cent of all medical diagnoses and 100 per cent of all cancer diagnoses require pathology.

Public pathology is the foundation of pathology in Australia. Public pathology represents a core part of Australia's public hospital and health care services. Unlike other pathology providers, public pathology providers operate for the benefit of the public health system and its patients.

Public Pathology Australia members are the major government owned and operated pathology services in each State and Territory in Australia. They provide the vast majority of pathology services in Australia's public hospitals and service several private hospitals. Public pathology also provides community based collection services for patients upon referral from GPs and Specialists under the MBS.

In addition to diagnostic services, our members conduct research and teaching in the areas of new and existing diseases, tests and treatments, and collaborate closely with colleagues in all areas of patient care, with many pathologists also performing clinical roles. Their laboratory testing and medical consultation services play a crucial role in timely clinical diagnosis, in monitoring therapy and in prevention of disease in individuals and the community.

Public Pathology

Provides comprehensive access for all patients

Provides high quality, integrated care

Provides expertise in complex medicine

Helps protect our communities

Undertakes research, education and training

Operate for the benefit of the public health system and its patients

Competitive Neutrality Review Submission

Pathology Market

As this submission is to Federal Treasury, it will focus on the Commonwealth funded pathology services under the Medicare Benefit Schedule (MBS); some $2.5 billion worth of services per annum.[2] Further and separate information about the hospital and health services[3] funded by state and territory government (e.g. inpatient hospital pathology) will be provided to the Productivity Commission should it be required.

The Australian MBS funded pathology market is dominated by two private providers, Sonic Healthcare and Primary Healthcare (with market shares of 41.4% and 32.7% respectively[4]). Barriers to new market entry and competition in the industry are high. This has been due to the high cost of building large laboratories and maintaining quality assurance, the cost of collection centres, building a referral base and the presence of economies of scale and scope. The basis of competition has been on volume – predominantly by securing market share with high rents for collection space within especially large and multi-provider medical practices or by vertical integration and buying out of medical practices. Growth by acquisition of smaller pathology practices has also been a driving strategy for the two largest corporate providers.[5]

Public pathology providers are disadvantaged in competing with private pathology providers. Public pathology providers are governed by state and territory policy which limits the amount of rent which can be paid for non-hospital based collection space. In addition, public providers are paid less for collection fees and bulk bill incentives compared to private providers. MBS expenditure for collection fees was $217.5 million in 2015 and private providers received between $5.95 and $17.60 per collection compared with $2.40 if the same collection was done by a public provider. Bulk bill incentive payments were $100.8 million in 2015 and again private providers were paid more than public providers. This means that private providers are subsidised by >10% of their income compared with the public sector.

Public pathology providers are also bound by geographical jurisdictions and restrictions such as cumbersome government procurement processes. There has been some consolidation in the public pathology sector with the development of statewide services from smaller public services originally formed to service local hospital and health networks. The most recent being NSW Health Pathology. Tasmania is currently progressing a statewide service. Victoria is the only jurisdiction without a statewide public pathology service. The challenge of securing sufficient scale to maximise efficiencies could be addressed

[2] Australian Government http://medicarestatistics.humanservices.gov.au/statistics/mbs_group.jsp
[3] Known by different names in different jurisdictions e.g. Hospital & Health Services (HHSs) in Qld, Local Health Districts in NSW
[4] Ibis (2014) Pathology Services in Australia
[5] www.sonichealthcare.com.au, www.primaryhealthcare.com.au

by Governments working together to improve specimen referrals between jurisdictions with agreed centres of testing excellence and facilitating cross-jurisdictional procurement practices. However, in the acute care setting significant local hospital pathology services are required to provide rapid testing for fast decision making and to allow national targets such as the 4 hour rule (National Emergency Access Target) to be achieved.

In the MBS pathology market, public pathology volumes are dependent on the geographical area in which public providers are authorised to operate and to what degree the private pathology companies service those areas. Not all public laboratories undertake the same level of MBS billing. MBS revenue equates to 12% - 59% of expenditure budget of public providers.[6] WA, SA and NSW have a relatively large network of collection centres to service the needs of their respective populations. 30.6% of all collections in Approved Collection Centres (ACCs) are processed by public laboratories[7]. Public providers tend to provide the services that the private sector deem unprofitable. For example, public pathology provides after-hours services, tests that are under-remunerated on the MBS (e.g. complex histopathological examinations), tests that are not listed on the MBS (e.g. genetic tests) and tests for populations in remote communities (e.g. APY lands, South Australia). Nationwide access to pathology exists because the public sector fills an important gap in the market.

There are 5442 Approved Collection Centres (ACCs) in Australia.[8] Several hundred ACCs are operated by the public sector. The public sector plays a very important role in the MBS-funded pathology market. The public sector provides quick turnaround times for pathology results, is a critical alternative provider of bulk-billed services and ensures that patients do not have to travel extensively to access pathology services. By way of example, PathWest (the public pathology service for Western Australia) operates 77 ACCs. Of these, 55 (71%) ACCs are located outside the metropolitan area - 18 ACCs are in remote areas where there are no GPs, 25 are in rural areas and 12 are in regional areas.

The pathology market is one of the most concentrated pathology markets in the world due to the way MBS funding is directed for pathology testing and specimen collection, as well as regulation issues.[9] Combined with increasing activity from an ageing population, rising levels of chronic disease, new technologies (such as digital anatomical pathology, molecular, genetics and point of care testing), pathology providers have been under significant pressure. This has resulted in a significant loss of diversity in the market.[10] Patients therefore have less options and are unable to make informed choices when it comes to selecting a pathology provider; consumers are largely influenced by prominent branding on request forms.

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[6] Public Pathology Australia (2014), Member Survey
[7] Australian Government, http://medicarestatistics.humanservices.gov.au/statistics/mbs_group.jsp.
[8] Australian Government https://www2.medicareaustralia.gov.au/pext/pdsPortal/pub/approvedCollectionCentreSearch.faces
[9] https://theconversation.com/true-blood-cutting-through-confusion-about-pathology-cuts-55140
[10] https://www.accc.gov.au/search/accc-funnelback/pathology

A further consequence of consolidation is that pathology suppliers will withdraw tests from the market or not seek to introduce new tests with low reimbursement or low volume.[11] If competitive neutrality is more broadly applied in practice, privatisation of pathology is likely to reinforce the existing oligopoly and not be in the best interest of patients. The fee for service model of pathology further encourages over testing and excludes pathology providers from limiting use of unhelpful and misleading tests as it financially penalises them for this activity.

Competitive Neutrality

'Competitive neutrality (CN) requires that government business activities should not enjoy any net competitive advantages simply by virtue of public sector ownership. This allows market competition to drive the efficient production of goods and services by the lowest cost business.'[12] CN provisions already exist in the jurisdictions such as NSW and Victoria, and are operational in the pathology sector.

The Harper Review 'argued that the case for extending CN is strongest when:

- there are different arrangements for government providers operating in the same market as alternate providers, and
- the differential treatment is not justified in net public benefit grounds'.[13]

In the case of pathology, there are different arrangements for government providers in the same market as private providers. There are differential funding arrangements in favour of the private pathology providers under the Medicare Benefits Schedule (MBS). There is no justification for this inequity. Previous governments have committed to addressing funding parity but have never followed through entirely on this commitment.[14]

Specimen collection fees are to cover the costs of preparing a specimen for testing, not the costs of providing the tests requested. Both private and public providers incur collection costs such as collection centre rent, use of equipment and consumables, staff, marketing, education, collection, transport, report delivery, invoicing and receipting. However, public pathology providers only receive a nominal $2.40 for every pathology episode compared to fees between $5.95 and $17.60 for a specimen collected by private pathology providers. The differential fee structure has no justification and provides the private sector with a competitive advantage.

[11] IVD Australia (2017) Submission to the 2017–2018 Budget on behalf of the IVD Industry in Australia, p. 9.
[12] P1 CN Review
[13] Australian Government (2015) Harper Review p269-270 cited in CN Review p4
[14] Australian Government (2014) Pathology Funding Agreement 2004-2009, Clause 8.6

Pathologists employed by the public sector may exercise their Rights of Private Practice and bill for Medicare-eligible services. The costs of operating such practices mentioned above (such as collection centre rent) are paid by public pathologists in the form of infrastructure/facility fees to State Government. Under the MBS, a public sector pathologist exercising their Rights of Private Practice receives less MBS fees compared to a private sector pathologist for the same service. The private sector applies their higher fees towards high collection centre rents to outbid competitors. Private pathology providers typically pay significantly higher than the market rent for comparable medical suites in a similar geographical area if the landlord is a General Practitioner (GP) or Medical Specialist. Private pathology providers essentially pay these landlords for a referral stream to secure business. Despite commitments to address this unethical practice, the regulations that facilitate this have not been amended.[15]

Commonwealth activity based funding paid to State/Territory Governments specifically exclude funding for MBS-eligible services.[16] State/Territory Government subsidises MBS community pathology services in areas of need as the Commonwealth underpays for these services provided by the public sector. The Commonwealth has not met its community service obligations in the MBS-funded community pathology market. It could do so by paying an appropriate MBS fee for pathology services provided in areas of need such as rural and remote Australia.

When it comes to pathology services directly funded by State/Territory Government, both public and private sectors receive funding for laboratory infrastructure and services. (e.g. Victoria Western Health and Latrobe Health, NSW Northern Beaches Hospital, WA Midlands Hospital). While the benefits of State/Territory government funding the private sector to operate public hospital pathology services are far from clear and if any, decrease over time, and have been plagued with contract management issues, this aspect is not covered in this submission.[17] Public Pathology Australia can provide further information on this issue to the Productivity Commission should it be required.

There are no net public benefit grounds to provide favourable treatment to one part of the pathology sector over another. Competitive neutrality (when it applies) should be extended to ensure that all providers in each market are treated equitably by government. Clearly, this is not the case in the MBS-funded pathology market and needs to change.

[15] https://www.liberal.org.au/latest-news/2016/05/13/coalitions-plan-access-affordable-pathology-all-australians
[16] https://www.ihpa.gov.au/
[17] Petersen et al (2017) Social Policy & Administration DOI: 10.1111/spol.12297
For example, Latrobe Health contract issues cited in www.msav.org.au

1. Updating the CN Policy

The consultation question is: How should the CN policy be updated to reflect commitments made since 1966?

The CN policy needs to be updated to reflect the commitments made since 1996, to modernise the policy and reflect contemporary practice.[18]

Public Pathology Australia supports the Commonwealth's commitment to update the CN policy to reflect Council of Australian Governments (COAGs) points of clarification from November 2000, additional comments made in the 2006 CIRA and the updated competition principle in the IGA CPR – as described in the CN Review Consultation Paper.[19] The following two points from these documents must be specifically included in a revised CN policy:

1. Community Service Obligations (CSOs) are excluded from the application of CN[20] and
2. CN is subject to a public interest test.[21]

Public pathology providers operate in the market for net public benefit grounds. They keep consumer costs down by bulk billing Medicare. This is particularly important in areas of socioeconomic disadvantage and rural areas that are not profitable for the private sector to service. Public pathology providers fulfil important **community service obligations** (CSOs) in doing so. If public providers did not undertake CSOs, patients would have to pay more for their pathology tests or go without tests that are essential for the diagnosis, treatment and management of disease.

2. Scope of the CN Policy

The consultation question is: 'What is the appropriate scope of the CN Policy to best fulfil the objective of CN? In particular, should the current test for 'significant business activities' be improved and should the application of CN be subject to a broader public interest test?'

Is the business activity 'significant'?

The $10 million turnover threshold is designed to exclude small-scale ancillary activities from the scope of the CN Policy. Public Pathology Australia agrees with a minimum turnover threshold as the costs of

[18] Australia Government (2015) Harper Review http://competitionpolicyreview.gov.au/final-report/
[19] CN Review p.7
[20] NCC 2002, p2.17 cited CN Review p.6.
[21] Clauses 9(f) & 10 IGA CPR.

implementing CN are greater than the benefits at a certain level. This level should be higher than $10 million considering that the Australian pathology market is highly consolidated, has high barriers to entry, and is predominantly government funded with combined Commonwealth/State/Territory funding over $3 billion. Any standalone service **under 10% of the market is not significant and should be exempt from CN.**

The public interest test

The Competition Principles Agreement requires Australian Governments to apply CN principles to the extent that the benefits of implementation outweigh the costs. It was envisaged that this cost-benefit assessment would constitute a broad public interest test.[22]

It is essential that a **broad public interest test** be included in the CN policy. The current practice of conducting a more limited assessment of the costs and benefits *of implementing* the principle of CN does not achieve the intention of the some of the subsequent changes in CN since 1996 and the policies adopted in other states and territories such as Victoria.[23]

Public health care services put patients before profits. In pathology, many community patients require a lot of pathology and they come to public hospital for their acute care. Public pathology provides a complete pathway – extending from acute inpatient services to outpatient and community services. This total package and results are needed to best link to inpatient and outpatient hospital care. If public pathology cannot offer easy to access pathology services to those in the community (i.e. Medicare funded services) it will be to the patients' detriment regarding ongoing informed care when they are admitted to public hospitals with urgent and/or serious medical conditions. Thus, consideration of the broader public interest test rather than a cost benefit analysis associated with CN implementation is required.

A broader benefit public interest test is required including an analysis of public versus private expenditure in health compared with outcomes achieved. Data comparing cost per person for health expenditure are publicly available and show that in western economies the absolute cost per citizen in dollars is higher in countries with a higher percentage of private healthcare expenditure.[24] For example the cost of health in the US was US $ 8895 (46.4% public health expenditure-PHE), in Switzerland it was US $ 8980 (61.7% PHE), in Australia US$ 6140 (66.9% PHE), Germany US$ 4683 (76.3% PHE), Japan US$ 4752 (82.5% PHE) and UK US$ 3647 (82.5% PHE).[25]

[22] CPA subclauses 1(3) and 3(6)
[23] CN Review Consultation Paper, p.11
[24] New England Journal of Medicine - International health care series; http://www.nejm.org/doi/full/10.1056/NEJMp1413937; accessed 21.04.17
[25] World Bank (2012)

Broader policy considerations should be considered when revising CN to reflect contemporary practice. A failure to update CN policy to reflect a contemporary practice such as higher thresholds and applying a broader public interest test and community service obligation exemption would undermine the value that public pathology brings to patients.

Namely, to:

- Provide comprehensive access for all patients;
- Provide high quality, integrated care;
- Provide expertise in complex medicine;
- Help protect our communities;
- Undertake research, education and training; and
- Operate for the benefit of the public health system and its patients.

Recommendation

Competitive neutrality policy must be amended to reflect contemporary best practice. When applied to the pathology sector, this means that community service obligations must be clearly exempt, there should be a higher significant business activity threshold and broader public interest exemptions applied.

Competitive neutrality should extend to ensure that all providers in a given market are treated equitably by government. This is not the case in the MBS-funded pathology market and needs to change. Any policy which reinforces the existing oligopoly limits patient choice and access to essential pathology tests. The downstream health, cost and political ramifications of not this would not be in the best interest of Australia.

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